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REMARKS

Applicant has filed the present Amendment and Response in reply to the Final Official Action dated May 11, 2006 and Applicant believes that the Amendment and Response are fully responsive to the Final Official Action for at least the reasons set forth herein.

Claims 1-18 have been rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent 6,165,169 to Panescu et al. ("Panescu").

Claims 1-18 are pending.

Applicant notes that the title of the application has been amended to: A Heating Treatment Apparatus.

Additionally, Applicant notes that the preamble for the device claims has been amended to reflect the change in the title, i.e., an apparatus. Furthermore, Applicant notes that the body of Claims 1-3, 5, 7, 9, 11, 15, 17 and 18 has been amended herewith. Specifically, Claims 1, 7, 11, 15 and 17 have been amended to clarify the calibration device. The calibration device is a heating setting device for setting a resistance value for each temperature level, respectively, for controlling the driving circuit or the control section on the basis of the measurement or judgment. Claims 1 and 7 have been amended to recite an initial characteristic measurement device for measuring the initial operating characteristics of the heater. Claim 17 has been amended to recite that a heating setting device sets a control resistance value for a specific temperature level. The control resistance value is selected from the required resistance value for each temperature level calculated by the temperature correcting device.

Independent Claims 1, 7, 11, 15 and 18 have also been amended to recite that the drive circuit or drive section drives the heater to one or more temperature levels.

Furthermore, Claim 17 has been amended to clarify the function of the temperature measuring device and the temperature correcting device. The temperature measuring device measures the ambient temperature in a vicinity of the heating treatment apparatus nearly simultaneously to the resistance value detecting device detecting the resistance value of the heater. We note that Claim 3 has also been amended to reflect this feature. The temperature correcting device calculates the required resistance value for each temperature level.

Claims 2 and 15 have been amended to clarify the functionality of the control section. Specifically, the claims recite that the control section supplies electrical power to the heater by a power supply device on the basis of the resistance value set by the heating setting device corresponding to the set temperature level set by the operating device and the detection results of the resistance value detecting device. The heating setting device sets the resistance value for each temperature level, respectively, on the basis of the resistance value data read out from the plurality of resistance value tables.

Additionally, Claims 3 and 17 have been amended to delete the term "environmental" from the temperature sensor.

Method Claim 18 has been amended to correspond with the device claims. Specifically, the amendments clarify the judgment, calibration and control steps. The judgment step is a measurement of the initial characteristics of the heater; the calibration step is an assignment of specific resistance values for each temperature level; and the control step is controlling the heater based upon the measured results.

Claims 5 and 9 have been amended to reflect the amendments to their respective independent claims, i.e., measurement device and not a judgment device.

No new matter has been added by the aforementioned amendments. For example, support therefore can be found in Figures 6 and 12 and pages 13-16. Additional support can be found at pages 36 and 37 and Figures 19-24.

Applicant submits that the amended claims are patentably distinct from the cited reference. Specifically, the reference does not teach measuring the initial characteristics of the heater. At best, the reference teaches detecting the characteristics. These characteristics, e.g., XYZ 170 appear to be stored in the device and are not a measured quantity. The signal processor identifies the characteristic by a predetermined code. Each identification code uniquely identifies a particular structure in terms of the physical properties of the electrode, or in terms of the functionality of the electrode. The identification element is attached in association with each structure within the family to retain the identification code.

The reference states that each structure carries an identification component, i.e., XYZ. The identification component carries the assigned identification code. "In the illustrated embodiment, the coded component is located with the handle of the probe that carries the structure." See Col. 26, lines 21-25. The coded component is electrically coupled to an **external interpreter** when the probe is plugged into the control unit. The interpreter inputs the code XYZ that the coded component contains. The interpreter displays an understandable alphanumeric format for the physical, mechanical and functional characteristics of the structure that the code XYZ signifies. Col. 26, lines 33-44.

Clearly, the reference teaches that the control unit detects a coded component in the electrodes, decodes the unique code and interprets the code. The reference does not teach at any time measuring the characteristics and determining the type of heater based upon the measured characteristics.

The claimed invention has a significant advantage over the prior art. The claimed invention measures the initial characteristics of the heat each time that the heater is connected. These initial characteristics can be time and temperature dependent, i.e., resistance, and, therefore, can change. The measured initial characteristic is the true value for the characteristic. The unique code only represents, at best, characteristics for the electrode that corresponded to the electrode at the time of manufacturing or encoding. The current characteristics might be significantly different from the initial characteristics during the code assignment, causing the interpretation of the code to be incorrect.

Accordingly, the reference does not teach the measuring device of the claimed invention.

Additionally, the reference fails to teach a heating setting device for **setting a resistance value for each temperature level**, respectively, for controlling the driving circuit on the basis of the measurement or judgment.

In the claimed invention, the heating setting device assigned a resistance value to each temperature level, i.e., level 1-5. When one of the levels is selected, the heating setting device sends the corresponding preset resistance value to the driving circuit.

The reference does not teach this initial assignment for each temperature level. Applicant acknowledges that the reference states that the control unit can also include functional algorithms coupled to the processor that sets operating parameters based upon

the code. However, Applicant submits that the teaching in the reference is not commensurate with the scope of the claim language. At best, the setting of the operating parameter is equivalent to driving the driver circuit based upon the detected result, rather than the assignment of the resistance values for each temperature value, prior to operation of the operating section.

Furthermore, the reference fails to teach a temperature measuring device for measuring the ambient temperature in a vicinity of the heating treatment apparatus **nearly simultaneously to the resistance value detecting device detecting the resistance value of the heater, a temperature correcting device for calculating a required resistance value for each temperature level on the basis of the detection results detected by the resistance value detecting device and the measurement results measured by the temperature measuring device.** Additionally, the reference fails to teach a heating setting device for setting a control resistance value for a specific temperature level, said control resistance value is selected from said required resistance value for each temperature level calculated by the temperature correcting device, as recited in Claim 17.

In an embodiment, the specification describes that the temperature sensing section 100 measures the temperature in the vicinity of the main unit. Furthermore, the temperature sensing section measures the temperature at the time that the resistance value detecting section 35 detects the resistance values. See Page 39. In contrast, the reference teaches that the control unit detects a coded component in the electrodes, decodes the unique code and interprets the code. The reference neither measures the temperature in the vicinity of the device nor measures the resistance value of the heater at the same time as the measurement of the temperature.

Additionally, the reference does not enable the limitation in question. A prior art reference must enable each and every limitation of the claim. In order to anticipate, a prior art reference must not only disclose all of the limitations of the claimed invention, but also be enabled. Elan Pharms., Inc. v. Mayo Found., 346 F.3d 1051, 1054 (Fed. Cir. 2003). A reference is enabled when its disclosures are sufficient to allow one of skill in the art to make and use the claimed invention. Id. (quoting Bristol-Myers Squibb Co. v. Ben Venue Labs., Inc., 246 F.3d 1368, 1374 (Fed. Cir. 2001)). Like a patent, a prior art reference is enabled even if some “routine experimentation is required in order to practice a claimed invention, but . . . such experimentation must not be ‘undue.’” Enzo Biochem, Inc. v. Calgene, Inc., 188 F.3d 1362, 1371 (Fed. Cir. 1999). When considering whether or not a prior art reference requires “undue experimentation”, we look at the reference from the perspective of a person of ordinary skill in the art. In re Wands, 858 F.2d 731, 735 (Fed. Cir. 1988).

Therefore, Applicant submits that independent Claims 1, 7, 11, 15, 17 and 18 are patentably distinct from the cited reference.


Claims 2-6, 8-10, 12-14, and 16, which depend directly or indirectly from the independent Claims 1, 7, 11, 15, 17, and 18, incorporate all the limitations of the corresponding independent claim and are, therefore, patentably distinct over Panescu for at least those reasons provided for claims 1, 7, 11, 15, 17, and 18.

For all the foregoing reasons, the Applicant respectfully requests the Examiner to withdraw the rejections of Claims 1-18 pursuant to 35 U.S.C. § 102 (b).

In conclusion, the Applicant believes that the above-identified application is in condition for allowance and henceforth respectfully solicits the Examiner to allow the

application. If the Examiner believes a telephone conference might expedite the allowance of this application, the Applicant respectfully requests that the Examiner call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,



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